

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1109

To be argued by
BARRY BASSIS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

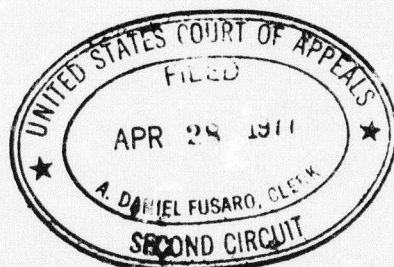
RAYMOND RICARD,

Appellant.

Docket No. 77-1109

APPENDIX FOR APPELLANT
RAYMOND RICARD

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
RAYMOND RICARD
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

BARRY BASSIS,

Of Counsel.

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET - U.S. District Court

OFFENSE NO. ☐ JUDGE/CLERK Assigned U.S. OFFENSE NO. ☐ 0856 vs. RICARD, RAYMOND ERNEST Case Filed Mo. Day 08 19 76 -776 01

MEANOR Mis ☐ FELONY Fel ☒ 0208 1 District Office (LAST, FIRST, MIDDLE) JUVENILE No. of Dets * 01 Yr. Docket No. Def.

U.S. TITLE/SECTION 18:1701 Obstruction of mail. 1

18:1708 Possession of stolen mail 1

18:1701 Obstruction of mail 2

ORIGINAL COUNTS

U.S. MAG. CASE NO. BAIL • RELEASE

☐ Denied ☐ AMT ☐ Fugitive ☐ Pers. Recog. ☐ PSA

\$ 000 conditions

☐ Date ☐ 10% Deposit ☐ Surety Bond

☐ Bail Not Made ☐ Collateral

☐ Status Changed (See Docket) ☐ 3rd ☐ Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began 3-13-76 High Risk Date Information ☒ 8-19-76

Summons Served Indict. Waived ☐ Superseding ☒ Indict/Info 12-14-76

First Appearance In Charging District

ARRAIGNMENT 8-26-76 Trial Set For

1st Plea 8-26-76 ☒ NG ☐ G ☐ NOL (G. Plea W/Drawn)

Final Plea ☐ NG ☐ G ☐ NOL

TRIAL Voir Dire ☐ Trial Began 12-31-76 ☒ Trial Ended 12-31-76

SENTENCE Disposition of Charges 12-31-76 2-23-77

☒ Convicted ☐ On All Charges ☒ On Lesser * Offense(s)

☐ Acquitted ☐ Dismissed: ☐ WOP ☐ WP ☐ On Government's Motion

MAGISTRATE

Search Warrant Issued ☐ Return ☐ Summons Issued ☐ Served ☐ Arrest Warrant Issued ☐ COMPLAINT ☐ OFFENSE (In Complaint)

DATE INITIAL/NO. INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT

OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. James A. Moss 791-1929

ATTORNEYS Defense ☐ CJA ☐ Pct ☐ Waived ☐ Snt ☐ Vena / Other ☐ PD ☐ CO

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
8-19-76		Filed information.	
8-26-76		Deft.(atty. present) Pleads not guilty. Deft. ordered photographed and fingerprinted. Deft. R.O.R. Case assigned to Judge Griesa for all purposes. Werker,J.	
9-2-76		Filed financial affdvt.	
9-27-76		PTC HELD-Suppression Hearing 10:15 Oct.5,1976.GRIESA,J	9-27-76 E-1
10-05-76		Deft (atty.John Curley,present) Suppression Hearing BEGAN. GRIESA,J	
10-06-76		Suppression Hrg. CONT'D & CONCLUDED. Motion to suppress is denied.Trial date to be set.GRIESA,J	
12-14-76		Filed transcript of record of proceedings dated:10-5th & 6th, 1976	
12-14-76		Filed Superseding Indictment & referred to Griesa,JGriesa,J.	

DATE	76Cr.776 R.E.Ricard IV PROCEEDINGS (continued) PAGE TWO	V EXCLUDABLE DELAY			
	DOCUMENT NO.	Reference to (1)	Start Date End Date (2)	Ltr Code (3)	Total Days (4)
12-21-76	Deft & atty.present....TRIAL begun NON-JURY only on Count 1. Count 2 is dismissed by the Court. Original information is dismissed....DEFT is found H GUILTY on Count 1 by the Court. Sent. date Feb. 9, 1977 9:30 a.m..P.S.I. ordered...Bail cont'd. R.O.R....GRIESA,J.				
2-1-77	Filed transcript of record of proceedings, dated 12-21-76				
2-16-77	Filed affdvt. & notice of motion in Arrest of Judgment pursuant to Rule 34, an order dismissing indictment...Ret.2-23-77				
2-23-77	Filed memo endorsed on motion filed 2-16-77...Motion denied. So. Ordered...Griesa,J...				
2-23-77	Filed Judgment (Atty. John Curley,present) The defendant is committed for imprisonment for a period of TWO (2) YEARS on Count 1. Pursuant to Title 18, United States Code Section 3651, the defendant is to be confined in a jail type institution for a period of SIX (6) MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of EIGHTEEN (18) MONTHS. Surrender is adjourned pending outcome of appeal. GRIESA,J Entered on-2-24-77 Issued commitment and copies.				
3-7-77	Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from Judgment filed 2-23-77.Mailed copies to: Atty for Deft. William J. Gallagher,Legal Aid Society Federal Defender Services Unit US Court House,Foley Sq.NYC 10007-copy to US.Attorney.				

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

E
C
D
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JP:wp
12-600

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(S) 76 CR 776

UNITED STATES OF AMERICA

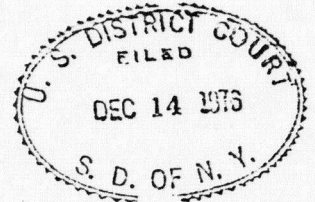
INDICTMENT

S 76 Cr.

- v -

RAYMOND ERNEST RICARD,

Defendant.



COUNT ONE

The Grand Jury charges:

On or about the 13th day of March, 1976, in the Southern District of New York, RAYMOND ERNEST RICARD, the defendant, did unlawfully, wilfully and knowingly have in his possession two books of American Express money orders numbered 45-421-980-521 through 45-421-930-559, said money orders being addressed to:

Ray Drugs
4061 Broadway
New York, New York 10032

which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail, knowing the same to have been stolen, taken, embezzled and abstracted.

(Title 18, United States Code, Section 1703.)

COUNT TWO

The Grand Jury further charges:

On or about the 13th day of March, 1976, in the Southern District of New York, RAYMOND ERNEST RICARD, the defendant, did unlawfully, wilfully and knowingly obstruct and retard the passage of the mail by taking from the United States mail, two books of American Express money orders, to wit, money orders numbered 45-421-980-521 to 45-421-980-559, said money orders being addressed to:

Ray Drugs
4061 Broadway
New York, New York 10032.

(Title 18, United States Code, Section 1701.)

MICROFILM

DEC 14 1976

Donella H. Bennett
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

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Feb 23, 1977

B Def't. (att present) is sentenced to 2 years.
Pursuant to Sec. 3651, T. 18, USC, 6 months to be
served in a jail type institution, the remainder
of sentence is suspended and Def't is placed on
Probation for 18 months to commence upon
end of confinement. Surrender is adj. pending
appeal - continued ROR.

Guesin, J.

J /

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

JOHN EDWARD RICHARD,

Defendant.

INDICTMENT

§ 76 Cr.

(As amended by 18 U.S.C. §§ 1781
and 1782.)

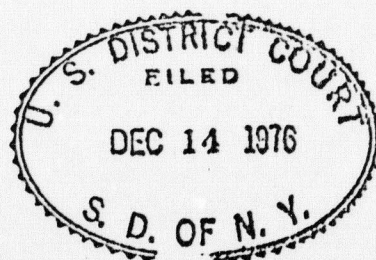
JOHN EDWARD RICHARD, JR.

United States Attorney.

A TRUE BILL

Donella H. Bennett

Foreman.



GRIESA, J. as a related and superceding
Indictment 76 Cr. 776 (GRIESA, J.).

Griesa, J.

R

12-21-76

Def't Richard (att present) Trial begun

NON-Jury only on count 1.

Count 2 is dismissed by the court.

Original Informant 76 Cr 776 is dismissed.

Def't. is found guilty on Count 1
by the Court. Sentence set adj

& Feb 9, 1977 9:30 AM. PSI ordered.

Bail continued ROR

Griesa, J.

(RW)

JAM:ow
4-2081

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

- v - :

INFORMATION

RAYMOND ERNEST RICARD, :

76 Cr.

Defendant. :

-----x

The United States Attorney charges:

On or about the 13th day of March, 1976,
in the Southern District of New York, RAYMOND ERNEST RICARD,
the defendant, did unlawfully, wilfully and knowingly
obstruct and retard the passage of the mail by taking
from the United States mail, two books of American Express
money orders, to wit, money orders numbered 45-421-980-521
to 45-421-980-559, said money orders being addressed to:

Ray Drugs
4061 Broadway
New York, New York 10032.

(Title 18, United States Code, Section 1701.)

ROBERT B. FISKE, JR.
United States Attorney

C

12 This is a motion to suppress evidence consisting
13 of packages of American Express forms allegedly stolen from
14 the post office. The motion is denied.

15 The question is, basically, one of credibility,
16 and after weighing the evidence I find the following:

17 That on March 13th, 1976, the defendant Ricard
18 and a passenger were traveling on the New Jersey Turnpike
19 towards Philadelphia. Ricard was driving. A New Jersey
20 police officer stopped the car and told Ricard that he had
21 been clocked at 75 miles an hour. Ricard apologized and said
22 he knew he was speeding but said he was a postal employee,
23 and he asked for leniency.

24 For some reason he reached inside his coat, and
25 it happened that inside a breast pocket, on the inside of his

2 jacket, there was a foil package which was observed by the
3 officer.

4 The officer asked what it was. Ricard said,
5 "Nothing."

6 The officer suspected that it was a packet con-
7 taining narcotics and took it out of the pocket, opened it,
8 and there was a white powder which, apparently, was cocaine.

9 In this same pocket were the packages of American
10 Express orders but the officer was not intent on these papers
11 immediately and did not know what they were, although they
12 probably were observed.

13 The officer then searched the defendant for
14 weapons. None were found.

15 The defendant was taken to a local police station,
16 and at that time there was a further search in which the
17 American Express blanks were taken from Ricard.

18 Ricard, himself, has testified substantially
19 differently in his version of the events, the main difference
20 being he testified that very shortly after the car he was
21 driving was halted for speeding, the officer proceeded to
22 pat him down, felt something in the chest pocket, and the
23 policeman asked what it was and Ricard said, "Nothing."
24 The policeman told him to take it out, and Ricard invited
25 him to take it out, at which time the policeman pulled out

1 pgds

2 the aluminum foil package containing cocaine.

B5 3 I reject this version and find in favor of the
4 version which I outlined earlier.

5 My observations of the witnesses on the stand
6 lead me to this conclusion.

7 Also, Ricard has made important untrue statements
8 to the authorities.

9 Furthermore, a purported corroborating witness
10 produced by Ricard this afternoon was not sufficiently
11 persuasive to overturn any conclusions that I have just
12 announced. Therefore the motion to suppress is denied.

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As the record shows, the case has gone to trial solely on Count 1 of Indictment 76 Cr. 776. The government has conceded that it has not made out a case and cannot make a case on Count 2. Therefore, Count 2 is dismissed.

The same holds true with respect to the information.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK N.Y. - 791-1020

1 gwl

2 76 Cr. 0776-- I'm sorry -- 76 Cr. 776 indictment is a
3 supplemental indictment supplementing an information, and
4 Count 2 of that indictment is dismissed.

5 The single count information in the original
6 76 Cr. 776 is also dismissed because the government has
7 conceded that it cannot and has not made out a case under that
8 information. This leaves for determination only Count 1 in
9 the superseding indictment, 76 Cr. 776.

10 I find the defendant guilty under Count 1. The
11 facts are these:

12 On March 13, 1976, when the defendant was driving
13 an automobile south on the New Jersey Turnpike he was arrested
14 for speeding.

15 In an ensuing search of the defendant's person a
16 narcotic substance was found and he was arrested and taken to
17 a station. At that time a further search was made or further
18 processing was made and two books of American Express Money
19 Orders were found on the defendant's person.

20 These books of money orders were part of a shipment
21 which had been mailed by American Express Company to Ray
22 Drug Company on March 10, 1976. Ray Drug Company is located
23 at 4061 Broadway, New York.

24 It is stipulated that although the shipment of
25 American Express Money Order books was mailed, the books were

2 never received by Ray Drug Company in the mail. The two
3 books found in the possession of the defendant on March 13,
4 1976, were complete except as to one money order.

5 In questioning by the state trooper in New Jersey,
6 the defendant said that he had gotten the books "on the
7 street." In later questioning by a postal inspector, the
8 defendant said that he had found these books in a mail truck
9 after he had finished a certain run on March 13th.

10 I find that the books were stolen from the mail,
11 although the exact identity of the thief is not known.

12 I further find that the defendant was in possession
13 of these stolen money order books and that he knew that they
14 had been stolen.

15 In connection with his knowledge, which is the
16 crucial issue in the case, I should mention the following:

17 There are really two possible states of mind
18 which the defendant could have had in connection with these
19 books:

20 One, a belief that they were lost; second, a
21 belief and knowledge that they were stolen.

22 I find that the government has successfully proved
23 beyond a reasonable doubt that the defendant knew that the
24 books were stolen rather than merely lost or misplaced.

25 It strains credulity to believe that a postal

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gwlt

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employee who is in possession of the contents of a recently

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stolen mail package and is driving with those contents towards

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another city rather than turning those contents back to the

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postal authorities that he actually thought that he was in

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possession of lost or misplaced property.

CERTIFICATE OF SERVICE

April 28, 1977

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Barry Bassis